

FILED

Apr 23 2008, 10:25 am

Kevin L. Smith

CLERK

of the supreme court,
court of appeals and
tax court

ATTORNEYS FOR APPELLEE:

STEVE CARTER
Attorney General of Indiana

**IN THE
COURT OF APPEALS OF INDIANA**

)
)
)
)
)
)
)
)
)

No. 48A04-0711-CR-604

APPEAL FROM THE MADISON SUPERIOR COURT
The Honorable Thomas Newman, Jr., Judge
Cause No. 48D03-0201-FB-52

April 23, 2008

MAY, Judge

James Williams appeals the revocation of his probation. Finding no abuse of discretion, we affirm.

FACTS AND PROCEDURAL HISTORY

On March 11, 2002, Williams pled guilty to escape, a Class B felony, and resisting law enforcement, a Class D felony. On April 8, 2002, Williams was sentenced to twenty years in the Department of Correction, with fourteen years suspended.

Williams was released to probation in January of 2005. On August 10, 2006, the State filed a Notice of Violation of Probation alleging Williams had failed to timely report to the Probation Department and had failed to pay court costs, restitution, and probation fees. A urine screen was ordered, and Williams tested positive for THC. At a hearing on October 23, 2006, Williams told the court he had been at a party where people were smoking marijuana, but he had not smoked any himself. Williams had paid his court costs and restitution by the hearing date, and the court returned Williams to probation.

On June 26, 2007, the State filed a second Notice of Violation of Probation due to several new convictions and arrests. At a hearing on July 2, 2007, Williams admitted he had been convicted of resisting law enforcement, criminal recklessness, and two counts of driving while suspended with a prior conviction of driving while suspended.¹

¹ One of these convictions arises from the events of August 26, 2006, discussed below; the other charges stemming from that date were pending at the time of the probation revocation hearing. In other words, Williams admitted to two convictions of driving while suspended with a prior conviction of driving while suspended, and the State presented evidence of two additional driving while suspended offenses.

The State presented evidence of three additional criminal cases pending against Williams. At 1:30 a.m. on August 26, 2006, Officer Ryan Trissel stopped Williams for driving left of center and discovered Williams' license was suspended. At 5:00 a.m. the same day, Officer Trissel saw Williams driving again. Officer Trissel arrested Williams for driving while suspended with a prior conviction of driving while suspended and cited him for having an open alcohol container in the vehicle. Williams also violated his curfew by being out at that hour.

On November 28, 2006, Officer Jason Lyons stopped Williams for failing to signal a turn. Williams told Officer Lyons he had a valid license, but did not have it with him. He said the vehicle was registered to a relative, and he did not have the paperwork with him. He gave Officer Lyons a false name, birth date, and social security number. No license matched the information Williams provided. Williams eventually provided his real name, and Officer Lyons found his license was suspended.

Officer Lyons also noticed Williams smelled of alcohol, his speech was slurred, and his eyes were glassy and bloodshot. He asked Williams to step out of the car, and Williams had trouble getting out and walking. Williams declined to submit to field sobriety tests. Officer Lyons arrested Williams for operating while intoxicated, driving while suspended with a prior conviction of driving while suspended, and false informing. Williams' probation officer, Tony New, testified Williams did not inform him of this arrest, as the terms of his probation required.

On March 7, 2007, Officer Steve Baugh was looking for Williams because he was a suspect in a shooting. An informant reported Williams was in room 120 of the Bestway

Inn. Officer Baugh went to that room and found the door standing open. Through the open door, he observed Williams sleeping on the bed with a bag containing a green leafy substance next to him. Officer Baugh arrested Williams for possession of marijuana. On searching the immediate area, Officer Baugh found an additional bag containing a green leafy substance. A field test indicated the bags contained marijuana. Officer Tom Dillard placed them in evidence bags and submitted them to a secure evidence facility. A laboratory test indicated the substance was marijuana.

The trial court found the State proved by a preponderance of the evidence the following probation violations: each of the new offenses, the curfew violation, and the failure to inform the probation officer of the arrest on November 28, 2006. The court revoked Williams' probation and ordered him to serve the remainder of his sentence in the Department of Correction.

DISCUSSION AND DECISION

Probation is "the granting of a conditional liberty;" it is "a favor and not a right." *Gardner v. State*, 678 N.E.2d 398, 401 (Ind. Ct. App. 1997). Probation violations need be proved by only a preponderance of the evidence. *Washington v. State*, 758 N.E.2d 1014, 1017 (Ind. Ct. App. 2001). A single violation is sufficient to permit a trial court to revoke probation. *Smith v. State*, 727 N.E.2d 763, 766 (Ind. Ct. App. 2000). When a condition of probation has been violated, the trial court may:

- (1) continue the person on probation, with or without modifying or enlarging the conditions;
- (2) extend the person's probationary period for not more than one (1) year beyond the original probationary period; or

- (3) order execution of all or part of the sentence that was suspended at the time of initial sentencing.

Ind. Code § 35-38-2-3(g). We review decisions to revoke probation and to order execution of a suspended sentence for an abuse of discretion. *Abernathy v. State*, 852 N.E.2d 1016, 1020 (Ind. Ct. App. 2006). “An abuse of discretion occurs if the trial court’s decision is against the logic and effect of the facts and circumstances before the court.” *Id.*

The convictions Williams admitted were sufficient to revoke his probation, and that decision was not an abuse of discretion. Nevertheless, Williams argues he should have been placed in Community Corrections because he had been maintaining a job as a barber and was supporting five children.² However, the record does not indicate whether Williams contributed a significant amount to his children’s support.

Williams also argues he has a drinking problem and needs treatment that could best be provided by Community Corrections. However, Williams’ inconsistent testimony concerning his marijuana use may well have led the trial court to conclude Williams would not benefit from treatment. (*See* Tr. at 99) (Williams says the marijuana found in the hotel was not his because “I don’t smoke weed.”); (*id.* at 108) (After being confronted with his positive urine screen, Williams admits he smoked marijuana in the past.); (*id.* at 137) (“I was smoking marijuana, like I said before, but I tried to quit – I’m trying to quit.”).

² Williams testified he had five children; other witnesses testified he had six children.

Williams admitted committing four new offenses, and the State offered evidence from which the trial court could conclude he had committed several more. The State had previously attempted to revoke Williams' probation, but the trial court treated him leniently because he represented he had not smoked marijuana. At the hearing on July 2, 2007, Williams acknowledged that was not true. The trial court did not abuse its discretion by ordering Williams to serve the remainder of his sentence in the Department of Correction.

Affirmed.

RILEY, J., and KIRSCH, J., concur.